

# **ATTACHMENT A**



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**Writer's Direct Access**  
**Timothy A. Doughty**  
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June 28, 2019

**Via ECFS**

Marlene J. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street SW  
Washington, DC 20554

**Re: Commonwealth Edison Company's Motion to Dismiss for Lack of  
Jurisdiction (Proceeding Number 19-169, 19-170; Bureau ID Number  
EB-19-MD-004, EB-19-MD-005)**

Ms. Dortch:

Please find attached Commonwealth Edison Company's Motion to Dismiss for Lack of Jurisdiction in Proceeding Number 19-169, 19-170; Bureau ID Number EB-19-MD-004, EB-19-MD-005.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Tim Doughty', is written over a faint, larger version of the same signature.

Timothy A. Doughty  
Attorney for Commonwealth Edison Company

Enclosures

cc: Lisa Saks, Enforcement Bureau  
Adam Suppes, Enforcement Bureau  
Anthony DeLaurentis, Enforcement Bureau  
Rosemary McEnery, Enforcement Bureau

PUBLIC VERSION

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

_____	)	
	)	
<b>Crown Castle Fiber LLC,</b>	)	
<i>Complainant,</i>	)	
	)	<b>Proceeding Number 19-169</b>
	)	<b>19-170</b>
<b>v.</b>	)	<b>Bureau ID Number EB-19-MD-004</b>
	)	<b>EB-19-MD-005</b>
<b>Commonwealth Edison Company,</b>	)	
<i>Defendant</i>	)	
_____	)	

**MOTION TO DISMISS FOR LACK OF JURISDICTION**

Pursuant to Section 1.729 of the Commission’s rules,<sup>1</sup> Commonwealth Edison Company (“ComEd”) respectfully requests that the Federal Communications Commission (“FCC” or “Commission”) dismiss with prejudice the Pole Attachment Complaints (“Complaints”) filed on June 19, 2019, by Crown Castle Fiber LLC (“Crown Castle”) in the above-captioned proceedings.

The FCC currently recognizes the State of Illinois as a state that has certified that it regulates pole attachments, and “[s]uch certificate shall be conclusive proof of lack of jurisdiction of this Commission” over a pole attachment complaint. 47 C.F.R. § 1.1405(a). Crown Castle’s arguments that Illinois regulation is incomplete are therefore irrelevant. They are also wrong. This is therefore one of the “few circumstances justifying the filing of a separate motion to dismiss.”<sup>2</sup>

<sup>1</sup> 47 C.F.R. §1.729.

<sup>2</sup> *Rules Consolidation Order*, 33 FCC Rcd 7178, 7183, at ¶¶13 and 14.

**A. FCC Rules “Conclusively” Divest Jurisdiction Where, As Here, a State Certifies Its Own Regulation of Pole Attachments**

The federal Pole Attachment Act divides jurisdiction over pole attachments between the FCC and any State that certifies to regulate pole attachments and requires the FCC to defer to state regulation.<sup>3</sup> All of the poles at issue in these proceedings are located in the State of Illinois, and the Illinois Commerce Commission (“ICC”) has properly certified that it regulates pole attachments in the State.

Following section 224(c), the Commission’s pole attachment regulations require dismissal of complaints in circumstances where a State regulates pole attachments:

§ 1.1405 Dismissal of pole attachment complaints for lack of jurisdiction.

(a) The complaint shall be dismissed for lack of jurisdiction in any case where a suitable certificate has been filed by a State pursuant to paragraph (b) of this section. Such certificate shall be conclusive proof of lack of jurisdiction of this Commission. A complaint alleging a denial of access shall be dismissed for lack of jurisdiction in any case where the defendant or a State offers proof that the State is regulating such access matters. Such proof should include a citation to state laws and regulations governing access and establishing a procedure for resolving access complaints in a state forum. A complaint against a utility shall also be dismissed if the utility does not use or control poles, ducts, or conduits used or designated, in whole or in part, for wire communication or if the utility does not meet the criteria of § 1.1402(a) of this subpart.

(b) It will be rebuttably presumed that the state is not regulating pole attachments if the Commission does not receive certification from a state that:

(1) It regulates rates, terms and conditions for pole attachments;

(2) In so regulating such rates, terms and conditions, the state has the authority to consider and does consider the interests of the consumers of the services offered via such attachments, as well as the interests of the consumers of the utility services; and

(3) It has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments (including a specific

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<sup>3</sup> 47 U.S.C. §§224(c)(1) (“(c) State regulatory authority over rates, terms, and conditions; preemption; certification; circumstances constituting State regulation. Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f), for pole attachments in any case where such matters are regulated by a State.”).

methodology for such regulation which has been made publicly available in the state).<sup>4</sup>

Illinois has, in fact, filed a “suitable certificate” pursuant to rule 1.1405(b), and such certification constitutes “conclusive proof” that Illinois has jurisdiction. The State of Illinois originally certified its regulation of pole attachments on April 5, 1978.<sup>5</sup> This certification stated:

The Illinois Commerce Commission of the State of Illinois does regulate rates, terms, and conditions for pole attachments to the poles, ducts, conduits, or right-of-ways owned or controlled by public utilities, as defined in the Illinois Public Utilities Act, and in so regulating such rates, terms, and conditions the State of Illinois through the Illinois Commerce Commission has the authority to consider and does consider the interests of the subscribers of cable television services in Illinois as well as the interests of consumers of utility services in Illinois.<sup>6</sup>

This is the precise language required by rule 1.1405(b)(1) and (2), except that Illinois is referencing “the interests of the subscribers of cable television services” rather than “the interests of the consumers of the services offered via such attachments.” This distinction is appropriate because at the time of Illinois’s certification, that was the precise language required.<sup>7</sup>

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<sup>4</sup> 47 C.F.R. § 1.1405.

<sup>5</sup> *In the Matter of Public Utility Pole Attachments for Cable Television Services Pursuant to Amendment of the Communications Act of 1934, Set Forth in Section 224(c) Paragraphs (1) and (2)*, Illinois Commerce Commission, 78-R4 (Apr. 5, 1978) (available at <https://ecfsapi.fcc.gov/file/7020456679.pdf>), attached hereto at Exhibit A.

<sup>6</sup> *Id.*

<sup>7</sup> Prior to the passage of the *1996 Act*, the language of Section 224(c)(2) included a reference to State authority to consider the interests of the subscribers of cable television services. That language was revised by the *1996 Act* to reference State authority to consider the interests of the subscribers of the services offered via [pole attachments]. Section 224(c)(2) originally stated:

Each State which regulates the rates, terms, and conditions for pole attachments shall certify to the Commission that –

- (A) it regulates such rates, terms, and conditions; and
- (B) in so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interests of the subscribers of cable television services, as well as the interests of the consumers of the utility services.

The language was revised to the following:

Each State which regulates the rates, terms, and conditions for pole attachments shall certify to the Commission that –

As for Section 1.1405(b)(3), Part 315 of Title 83 of the Illinois Administrative Code governs the rates, terms and conditions applicable to cable television company attachments to electric utilities and local exchange telecommunications carriers.<sup>8</sup> By letter dated May 24, 1985, the Illinois Commerce Commission certified to the FCC as follows: “[T]he Illinois Commerce Commission has issued and made effective rules and regulations implementing this state’s regulatory authority over pole attachments. The attached rules, which include a specific methodology for such regulation, have been duly adopted by the Commission, filed with the Illinois Secretary of State, and made publicly available in Illinois.”<sup>9</sup> This again is the precise language required by rule 1.1405(b)(3).

The Commission itself has recognized that the ICC’s certification was suitable, by including Illinois on the list of the 20 states and the District of Columbia that have certified to the FCC that they regulate pole attachments. The FCC’s list recognizes that Illinois is among the 20 states and D.C. which:

have certified that they regulate rates, terms, and conditions for pole attachments, and, in so regulating, have the authority to consider and do consider the interests of subscribers of cable television services, as well as the interests of the consumers of the utility services. Moreover, these states have certified that they have issued and made effective rules and regulations implementing their regulatory authority over pole attachments, including a specific methodology for such regulation which has been made publicly available in the state.<sup>10</sup>

- 
- (A) it regulates such rates, terms, and conditions; and
  - (B) in so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services.

<sup>8</sup> 83 Ill. Adm. Code 315.10, *et seq.*

<sup>9</sup> See *WC Docket No. 10-101, States That Have Certified That They Regulate Pole Attachments*, State of Illinois, Illinois Commerce Commission, May 24, 1985 (available at <https://ecfsapi.fcc.gov/file/7020456531.pdf>), attached hereto at Exhibit B.

<sup>10</sup> *States That Have Certified That They Regulate Pole Attachments*, Public Notice, DA No. 10-893, 25 FCC Rcd 5541 (2010).

Since Illinois has filed a “suitable certificate” pursuant to Section 1.1405(b), Section 1.1405 requires that certificate to be “conclusive proof” that this Commission lacks jurisdiction.<sup>11</sup> The FCC’s list of certificated states confirms this for the State of Illinois by stating: “Certification by a state preempts the Commission from accepting pole attachment complaints under Subpart J of Part 1 of the Rules.”<sup>12</sup>

**B. Arguments that Illinois Regulation Is Incomplete Are Irrelevant and Wrong**

**1. Crown Castle’s Regulation Arguments Should Be Ignored**

Crown Castle’s arguments, identical in each of its complaints, that Illinois regulation is somehow incomplete are irrelevant under the FCC’s regulation, which treats a certification as “conclusive proof.”<sup>13</sup>

**2. In All Events, Crown Castle’s Arguments Are Incorrect: Illinois Regulates All Pole Attachments**

Crown Castle’s arguments concerning Illinois regulation are also incorrect, as the Illinois Public Utilities Act (“Illinois PUA”) and the applicable regulations easily cover these complaints. Crown Castle’s Complaints assert simply that “[t]he ICC’s pole attachment regulations do not apply to or make reference to attachments by telecommunications companies.”<sup>14</sup> But the Illinois PUA does cover telecommunications carriers’ attachments to electric companies’ poles. That Act gives the ICC jurisdiction over any “lease ... of ... any part of ... its ... plant, equipment, ... or other property.”<sup>15</sup> Thus, the state regulatory agency has

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<sup>11</sup> 47 C.F.R. §1.1405(a).

<sup>12</sup> *States That Have Certified That They Regulate Pole Attachments*, Public Notice, DA No. 10-893, 25 FCC Rcd 5541 (2010).

<sup>13</sup> 47 C.F.R. §1.1405(a).

<sup>14</sup> See Pole Attachment Complaint for Denial of Access, *Crown Castle Fiber LLC v. Commonwealth Edison Company*, Proceeding Number 19-169, Bureau ID Number EB-19-MD-004 (filed Jun. 19, 2019) at ¶17; Pole Attachment Complaint – Unlawful Rates, *Crown Castle Fiber LLC v. Commonwealth Edison Company*, Proceeding Number 19-170, Bureau ID Number EB-19-MD-005 (filed Jun. 19, 2019) at ¶16.

<sup>15</sup> 220 ILCS 5/7-102(A)(c) (“(c) No public utility may [without ICC approval or exemption] assign, transfer, lease, mortgage, sell (by option or otherwise), or otherwise dispose of or encumber the whole or any part of its franchises,

statutory authority to review pole attachments – for they are leases of public utility property. And, although the ICC’s rules do, in general, reference cable television system attachments, some of those provisions are broad enough to cover other attachments. Thus, 83 Ill. Admin. Code 315.30 refers to *all* situations “[w]here consent and approval of the Commission to a pole attachment or conduit agreement is required by Section 7-102 of the Act”<sup>16</sup> – and, as noted, section 7-102 creates ICC jurisdiction to all leases of public utility plant and equipment. Section 315.30 provides a mechanism through which any party complaining of a pole attachment agreement with an Illinois electric utility may bring the dispute to the ICC.<sup>17</sup> Indeed, the federal definition of a “pole attachment” (as amended in 1996) covers “any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.”<sup>18</sup> Section 315.30’s simple reference to “pole attachments” is therefore broad enough to cover telecommunications companies (as the Illinois PUA does). And section 315.30(b) refers to a specific rate calculation. While that rate calculation (in 315.20) refers to cable television rates, nothing in 315.30(b) makes it inapplicable to other pole attachments.

This interpretation of Illinois law best protects the Illinois PUA and it flows directly from Congress’s and the FCC’s history of protecting state jurisdiction during the entire history of the Pole Attachment Act. From 1978 to 1996, “pole attachment” was defined as any attachment by a cable television provider to a pole, duct, conduit, or right-of-way owned or controlled by a

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licenses, permits, plant, equipment, business, or other property, but the consent and approval of the Commission shall not be required for the sale, lease, assignment or transfer (1) by any public utility of any tangible personal property which is not necessary or useful in the performance of its duties to the public, or (2) by any railroad of any real or tangible personal property.”).

<sup>16</sup> 83 Ill. Admin. Code 315.30(a) & (b).

<sup>17</sup> Due to an exemption in the Illinois PUA, the utility is not required to affirmatively file the leases for approval. 220 ILCS 5/7-102(E). But the regulations create a complaint procedure to invoke ICC jurisdiction.

<sup>18</sup> 47 U.S.C. § 224(a)(4).



utility.<sup>19</sup> With the passage of the *Telecommunications Act of 1996*, the Commission’s jurisdiction was broadened to include “access” to poles and to cover attachments not only by cable companies but also by telecommunications carriers.

When the *Telecommunications Act of 1996* was passed and the FCC’s jurisdiction expanded to cover “access” to poles and to cover attachments by telecommunications carriers, the statutory changes to Section 224 did not require the states to certify that they regulate “access” to poles or specifically that they regulate attachments by telecommunications carriers. And there was nothing in the *1996 Act* to require states that had certified previously that they regulate pole attachments to re-certify that they now regulate “access” to poles and that they now regulate attachments by telecommunications carriers. Nor was there any direction from the FCC to the states that they must re-certify. Accordingly, the ICC did not re-certify that it regulated pole attachments following passage of the *1996 Act*.

Neither did any other state.<sup>20</sup> While a handful of states (totaling only four) either re-certified, amended prior certifications, or filed to certify jurisdiction for the first time over pole attachments after the passage of the *1996 Act*, none of them re-certified after their initial certification specifically to address the expanded jurisdiction over attachments in the *1996 Act*. For example, the Massachusetts Department of Telecommunications and Cable updated its pole attachment certification in 2010 to share its pole attachment jurisdiction with the existing

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<sup>19</sup> *Id.* at (a)(4).

<sup>20</sup> On May 19, 2010, the FCC established Docket 10-101 to collect and maintain state pole attachments certifications and addenda. We checked all 264 entries in this docket and were unable to identify any that re-certified assertions of jurisdiction over pole attachments following the passage of the *1996 Act*. See *States That Have Certified That They Regulate Pole Attachments*, Public Notice, 25 FCC Rcd 5541 (2010).

Massachusetts Department of Public Utilities, but did not mention anything about covering “access” to poles or attachments by telecommunications carriers.<sup>21</sup>

Both Arkansas<sup>22</sup> and New Hampshire<sup>23</sup> filed to certify their jurisdiction over pole attachments after the passage of the *1996 Act*, but only certified that they adopted rules governing the rates, terms and conditions for pole attachments, consistent with the limited certification requirement in the statute.

Similarly, no re-certifications by any state appeared following the FCC’s decision in its April 2011 Pole Attachment Order that the Pole Attachment Act should be interpreted to give the FCC jurisdiction over attachments by incumbent local exchange carriers (ILECs) to electric utility poles.<sup>24</sup> The FCC’s newfound jurisdiction over these “joint use” agreements between ILEC and electric utility pole owners was at odds with the FCC’s previous understanding that it lacked such jurisdiction. Nevertheless, as with the *1996 Act*’s changes in jurisdiction, there was no direction given by the FCC to the states that they must re-certify that they have jurisdiction over such ILEC attachments, and no state submitted any such re-certification.

In short, Congress intended that Illinois’ certification that it regulates pole attachments has the effect of occupying the entire field of pole attachment regulation, so that the ICC has exclusive jurisdiction to regulate pole attachments, leaving no such regulation for the FCC. The fact that neither Congress nor the FCC required states to re-certify following the *1996 Act* and

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<sup>21</sup> See WC Docket No. 10-101, *States That Have Certified That They Regulate Pole Attachments*, Commonwealth of Massachusetts, Dept. of Telecommunications and Cable, Aug. 25, 2010 (available at <https://ecfsapi.fcc.gov/file/7020910618.pdf>).

<sup>22</sup> See *Arkansas Certification of Regulations of the Rates, Terms and Conditions of Pole Attachments*, Arkansas Public Service Commission, Oct. 20, 2008 (available at <https://ecfsapi.fcc.gov/file/7020460248.pdf>).

<sup>23</sup> See *Certification of State-Law Regulations of Utility Pole Attachments Pursuant to 47 U.S.C. § 224(c) and 47 C.F.R. § 1.1414*, State of New Hampshire, Public Utilities Commission, Jan. 23, 2008 (available at <https://ecfsapi.fcc.gov/file/7020456133.pdf>).

<sup>24</sup> *In the Matter of Implementation of Section 224 of the Act*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5328 at ¶ 203 (2011).

the 2011 Pole Attachment Order, and that no state actually did re-certify, supports this interpretation. Indeed, to accept Crown Castle’s argument here would create substantial uncertainty over what had been a previously well-settled line between state and federal jurisdiction over pole attachment complaints in many states.

For these same reasons, Crown Castle’s reliance on a procedurally unusual letter from the prior ICC Chair, Brian Sheahan, dated October 25, 2018, is misplaced. That letter states that the Illinois regulations do not specifically mention “telecommunications companies.” As a threshold matter, the letter does not withdraw Illinois’ prior certification. But, more importantly, as explained above, the Illinois PUA does give the ICC authority over all pole attachments, including those sought by telecommunications companies. And section 315.30 of the ICC’s rules reference all “pole attachments” covered by the Act, which again includes telecommunications companies. And, finally, 315.30 refers to a rate formula embedded in the rules. As a result, even as to telecommunications companies, Illinois regulation does meet all of the requirements of the Pole Attachment Act and FCC regulations for effective state regulation.

The Pole Attachment Act reflects Congress’s interest in allowing states regulatory priority in this field. As the FCC has recognized, “The legislative history [of section 224] states that ‘The FCC shall defer to any State regulatory program operating under color of State law, even if debate or litigation at the State level is in progress ....’”<sup>25</sup> Thus, in the event there is any doubt of the ICC’s jurisdiction (though there should not be), the FCC should dismiss this complaint. Crown Castle may initiate a complaint with the ICC, which may determine the issue

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<sup>25</sup> *Adoption of Rules for the Regulation of Cable Television Pole Attachments*, First Report and Order, 68 FCC 2d 1585, 1601 (1978) (quoting S. Rep. No. 95-580, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess., p. 17 (1977)), *aff’d*, *Monongahela Power v. FCC*, 655 F.2d 1254 (1981) (following subsequent administrative action).

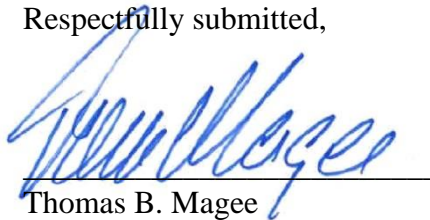
## PUBLIC VERSION

definitively in a proper adjudicatory context. The federal law requires that the FCC allow the states to determine the matter in the first instance.

In sum, Crown Castle's Complaints should be dismissed for the reasons discussed above, because: (1) the ICC's certification was effectively made; (2) the FCC's list of certified states affirms that the FCC has no jurisdiction in Illinois; and (3) Section 1.1405 of the Commission's rules requires that Illinois's certification be "conclusive proof" the Commission lacks jurisdiction.

ComEd therefore respectfully requests that the Commission dismiss Crown Castle's Complaints.

Respectfully submitted,



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*Attorneys for Commonwealth Edison Company*

June 28, 2019

# EXHIBIT A



August 11, 1978

WC 10-101

FILED/ACCEPTED

APR 26 2010

Federal Communications Commission  
Office of the Secretary

Mr. J. M. Talens

Jim:

Attached for your information is a copy of an Illinois Commerce Commission Resolution and Certification adopted April 5, 1978, concerning its jurisdiction over pole attachments, etc. Based upon our earlier conversation, I am under the impression you do not have this.

DOCKET FILE COPY ORIGINAL

A handwritten signature in black ink, appearing to read "A. E. Ross".

A. E. Ross

A. E. Ross, Jr.

10-101-6917

## STATE OF ILLINOIS

## ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission  
on its own motion

In the matter of Public Utility pole : 78-R4  
attachments for Cable Television Services :  
pursuant to Amendment of the Communications :  
Act of 1934; set forth in Section 224(c) :  
paragraphs (1) and (2). :

## RESOLUTION AND CERTIFICATION

WHEREAS, the Communications Act of 1934 has been amended to permit regulation by the Federal Communications Commission of rates, terms and conditions of Public Utility pole attachments by cable television systems to a pole, duct, conduit or right-of-way owned or controlled by the Public Utility; and

WHEREAS, the amended legislation, Section 224(c), paragraphs (1) and (2) does not apply or give authority to the Federal Communications Commission to regulate such attachments with respect to rates, terms, and conditions in a State which regulates the rates, terms, and conditions of such attachments; and

WHEREAS, pursuant to the authority vested in this Commission by virtue of the Illinois Public Utilities Act, Chapter 111-2/3, Section 1, et seq. of the Illinois Revised Statutes, every assignment, transfer, lease, mortgage, sale, or contract of franchise, licenses, permits, plant, equipment, or other property of any public utility, as defined in Section 10.3 of said Act, is subject to the review of this Commission; and

WHEREAS, this Commission does regulate the rates, terms, and conditions for pole attachments to the poles, ducts, conduits, or right-of-ways owned or controlled by public utilities, as defined above;

THEREFORE, BE IT RESOLVED AND CERTIFIED TO THE FEDERAL COMMUNICATIONS COMMISSION that the Illinois Commerce Commission of the State of Illinois does regulate rates, terms, and conditions for pole attachments to the poles, ducts, conduits, or right-of-ways owned or controlled by public utilities, as defined in the Illinois Public Utilities Act, and in so regulating such rates, terms, and conditions the State of Illinois through the Illinois Commerce Commission has the authority to consider and does consider the interests of the subscribers of cable television services in Illinois as well as the interests of consumers of utility services in Illinois.

BE IT FURTHER RESOLVED that a copy of this Resolution and Certification be forwarded to the Federal Communications Commission at 1919 "M" Street, Washington, D.C.

Adopted by this Commission this 5th day of April, 1978.

(S E A L)

(SIGNED) CHARLES P. KOCORAS

# **EXHIBIT B**



WC 10-101  
RECEIVED

FILED/ACCEPTED

APR 26 2010

STATE OF ILLINOIS

MAY 28 1985

## Illinois Commerce Commission

Federal Communications Commission  
Office of the Secretary527 EAST CAPITOL AVENUE  
SPRINGFIELD, ILLINOIS 62706

ENFORCEMENT DIVISION

May 24, 1985

DOCKET FILE COPY ORIGINAL

~~GRANTED~~~~Chief, Enforcement Division~~

Margaret Wood, Esq.  
Federal Communications Commission  
Room 6206  
1919 M Street, N.W.  
Washington, D.C. 20554

Dear Ms. Wood:

Enclosed is the Illinois Commerce Commission's certification that it has issued and made effective rules and regulations implementing its regulatory authority over pole attachments. This certification was requested by Howard M. Wilchins in his letter of May 15, 1985.

If you have any questions about this certification please contact Patrick Foster of our staff.

Sincerely,

Rose M. Claggett  
Chief Clerk

RMC/ja

Enclosure

WC 10-101

FILED/ACCEPTED

APR 26 2010

Federal Communications Commission  
Office of the Secretary

RECEIVED

MAY 28 1985

ENFORCEMENT DIVISION

CERTIFICATION

I, Rose M. Claggett, Chief Clerk of the Illinois Commerce Commission, hereby certify that the Illinois Commerce Commission has issued and made effective rules and regulations implementing this state's regulatory authority over pole attachments. The attached rules, which include a specific methodology for such regulation, have been duly adopted by the Commission, filed with the Illinois Secretary of State, and made publicly available in Illinois.

  
\_\_\_\_\_  
Rose M. Claggett, Chief Clerk  
Illinois Commerce Commission

# PUBLIC VERSION

## CERTIFICATE OF SERVICE

I, Timothy A. Doughty, hereby certify that on this 28<sup>th</sup> day of June 2019, a true and authorized copy of Commonwealth Edison Company's Motion to Dismiss for Lack of Jurisdiction was served on the parties listed below via electronic mail and was filed with the Commission via ECFS.

Marlene J. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street SW  
Washington, DC 20554  
[ecfs@fcc.gov](mailto:ecfs@fcc.gov)  
(By ECFS Only)

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/s/ \_\_\_\_\_  
Timothy A. Doughty

# **ATTACHMENT B**

## PUBLIC VERSION

10-K 1 cci10-k123118.htm 10-K

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**FORM 10-K**

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2018  
or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
Commission File Number 001-16441



**CROWN CASTLE INTERNATIONAL CORP.**  
(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction  
of incorporation or organization)

76-0470458  
(I.R.S. Employer  
Identification No.)

1220 Augusta Drive, Suite 600, Houston Texas 77057-2261  
(Address of principal executive offices) (Zip Code)  
(713) 570-3000  
(Registrant's telephone number, including area code)

Securities Registered Pursuant to Section 12(b) of the Act	Name of Each Exchange on Which Registered
Common Stock, \$0.01 par value	New York Stock Exchange
6.875% Mandatory Convertible Preferred Stock, Series A, \$0.01 par value	New York Stock Exchange
<b>Securities Registered Pursuant to Section 12(g) of the Act: NONE.</b>	

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicated by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See definitions of a "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in rule 12b-2 of the Exchange Act.

Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐ Smaller reporting company ☐ Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant was approximately \$44.6 billion as of June 30, 2018, the last business day of the registrant's most recently completed second fiscal quarter, based on the New York Stock Exchange closing price on that day of \$107.82 per share.

**Applicable Only to Corporate Registrants**

As of February 22, 2019, there were 415,568,382 shares of common stock outstanding.

**Documents Incorporated by Reference**

The information required to be furnished pursuant to Part III of this Form 10-K will be set forth in, and incorporated by reference from, the registrant's definitive proxy statement for the annual meeting of stockholders ("2019 Proxy Statement"), which will be filed with the Securities and Exchange Commission not later than 120 days after the end of the fiscal year ended December 31, 2018.

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## PUBLIC VERSION

## PART I

## Item 1. Business

## Overview

We own, operate and lease shared communications infrastructure that is geographically dispersed throughout the U.S., including (1) approximately 40,000 towers and other structures, such as rooftops (collectively, "towers"), and (2) approximately 65,000 route miles of fiber primarily supporting small cell networks ("small cells") and fiber solutions. Our towers, fiber and small cells assets are collectively referred to herein as "communications infrastructure," and our customers on our communications infrastructure are referred to herein as "tenants." Our core business is providing access, including space or capacity, to our shared communications infrastructure via long-term contracts in various forms, including lease, license, sublease and service agreements (collectively, "contracts"). We seek to increase our site rental revenues by adding more tenants on our shared communications infrastructure, which we expect to result in significant incremental cash flows due to our low incremental operating costs.

Below is certain information concerning our business:

- Over the last two decades, we have assembled a leading portfolio of towers predominately through acquisitions from large wireless carriers or their predecessors. More recently, through both acquisitions (see note 3 to our consolidated financial statements) and new construction of small cells and fiber, we have extended our communications infrastructure presence by investing significantly in our Fiber segment. Through our product offerings of towers and small cells, we seek to provide a comprehensive solution to enable our wireless tenants to expand coverage and capacity for wireless networks. Furthermore, within our Fiber segment, we are able to generate cash flow growth and stockholder return by deploying our fiber for both small cells' and fiber solutions' tenants.
- Below is certain information regarding our Towers segment:
  - Approximately 56% and 71% of our towers are located in the 50 and 100 largest U.S. basic trading areas ("BTAs"), respectively. Our towers have a significant presence in each of the top 100 BTAs.
  - We derive approximately 40% of our Towers site rental gross margin from towers residing on land and other property interests (collectively, "land") that we own, including fee interests and perpetual easements, and we derive approximately 60% of our Towers site rental gross margin from towers residing on land that we lease, sublease, manage or license.
  - The contracts for the land under our towers have an average total remaining life of approximately 35 years (including all renewal terms at our option), weighted based on Towers site rental gross margin.
- Below is certain information regarding our Fiber segment:
  - The majority of our small cells and fiber are located in major metropolitan areas, including a presence within every major U.S. market.
  - The vast majority of our fiber assets are located on public rights-of-way.
  - We operate as a REIT for U.S. federal income tax purposes. See "Item 1. Business—2018 Industry Highlights and Company Developments—REIT Status" and note 10 to our consolidated financial statements.

Certain information concerning our tenant and site rental contracts is as follows:

- Our largest tenants include AT&T, T-Mobile, Verizon Wireless and Sprint, which collectively accounted for 73% of our 2018 site rental revenues.
- Site rental revenues represented 87% of our 2018 consolidated net revenues, of which approximately 66% and 34% were from our Towers segment and our Fiber segment, respectively.
- The vast majority of our site rental revenues are of a recurring nature and are subject to long-term contracts with our tenants.
- Our site rental revenues derived from wireless tenants typically result from long-term contracts with (1) initial terms of five to 15 years, (2) multiple renewal periods at the option of the tenant of five to 10 years each, (3) limited termination rights for our tenants, and (4) contractual escalations of the rental price and, in some cases, an additional upfront payment.
- Our site rental revenues derived from our fiber solutions tenants (including from organizations with high-bandwidth and multi-location demands), typically result from contracts with (1) initial terms that generally vary between three to 20 years and (2) a fixed monthly recurring fee and, in some cases, an additional upfront payment.
- Exclusive of renewals at the tenants' option, our tenant contracts have a weighted-average remaining life of approximately five years and represent \$23 billion of expected future cash inflows.

As part of our effort to provide comprehensive communications infrastructure solutions, we also offer certain services primarily relating to our towers and small cells, predominately consisting of (1) site development services relating to existing or new tenant equipment installations, including: site acquisition, architectural and engineering, or zoning and permitting (collectively,

# ATTACHMENT C

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

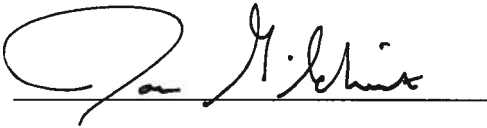
## DECLARATION OF JOE GILCHRIST

1. My name is Joe Gilchrist. I am currently the Manager of Real Estate & Facilities at Commonwealth Edison Company (“ComEd”).
2. I make this declaration in support of ComEd’s Answer to the Pole Attachment Complaint in the above-captioned proceeding.
3. I have held by current role for over three years and have worked at ComEd for 29 years.
4. ComEd is unaware of receiving any prior written notice of assignment from NextG Networks of Illinois, Inc.; Sunesys, Inc.; or Sidera Networks, LLC d/b/a Lighttower Fiber Networks as required under the pole attachment agreements dated December 22, 2004 (NextG Networks of Illinois, Inc.); May 5, 2005 (Sunesys, Inc.); July 26, 2013 (Sidera Networks, LLC d/b/a Lighttower Fiber Networks), nor has ComEd found any such notice of assignment after a diligent search of its records.



PUBLIC VERSION

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

By: 

Joe Gilchrist  
Manager, Real Estate & Facilities  
Commonwealth Edison Company

Dated: July 19, 2019

# **ATTACHMENT D**



Crown Castle  
2000 Corporate Drive  
Canonsburg, PA 15317

July 7, 2016

ATTN: Manny Alonso  
Real Estate Infrastructure Management  
ComEd  
Three Lincoln Centre  
Oakbrook Terrace, IL 60181

RE: Attachment Increase to Existing Crown Castle Pole Attachment Agreement and Corresponding  
Attachment Decrease to Existing Sprint Pole Attachment Agreement

Dear Mr. Alonso:

As you are aware, (a) Nextel West Corp. ("Sprint") and Commonwealth Edison Company ("ComEd") are parties to that certain Pole Attachment Agreement dated March 26, 2003 (the "Existing Sprint Pole Attachment Agreement"), and (b) NextG Networks of Illinois, Inc. now known as Crown Castle NG Central LLC ("Crown Castle") and ComEd are parties to that certain Pole Attachment Agreement dated December 22, 2004 (the "Existing Crown Castle Pole Attachment Agreement"). Please accept this letter as notification that (a) Sprint desires to transfer the following number of node attachments and fiber attachments identified on the attached Exhibit A (collectively, the "Attachments") currently issued pursuant to the Existing Sprint Pole Attachment Agreement to Crown Castle; and (b) Crown Castle desires to accept the Attachments and to add them as part of, and to be governed by, the Existing Crown Castle Pole Attachment Agreement. *Further asset detail contained in Schedule 1, attached.*

In addition, we are also notifying you that Crown Castle (or one of its affiliates) is acquiring certain fiber assets located in the Chicago region (the "Fiber Transaction") from SBA Communications Corporation (or one of its affiliates) ("SBA"). It is anticipated that the Fiber Transaction will occur on or before July 15, 2016. The transfer of the Attachments from Sprint to Crown Castle is conditioned upon the closing of the Fiber Transaction. You will be notified if the Fiber Transaction does not occur. Sprint and SBA hereby authorize Crown Castle to subsequently notify ComEd of the actual closing date of the Fiber Transaction (the "Transfer Date"). Upon such notification, ComEd is hereby authorized to transfer (effective as of the Transfer Date) the Attachments from Sprint to Crown Castle, it being acknowledged that the Attachments shall be governed on and after the Transfer Date by terms of the Existing Crown Castle Pole Attachment Agreement.

If, after the date of this letter, Crown Castle and/or ComEd identify additional Sprint node attachments and/or fiber attachments relating to the fiber assets associated with the Fiber Transaction that should have been

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PUBLIC VERSION

transferred from Sprint to Crown Castle, ComEd, Sprint and Crown Castle shall reasonably cooperate with one another to take all reasonable activities and to execute such documents to timely effectuate such transfer.

Thank you for your assistance in this matter. Please confirm that ComEd will transfer the Attachments on the Transfer Date by executing this letter and returning it to the signatories below at the email addresses identified below.

*ComEd will perform the transfer within 30 days of the date it is notified of the Transfer Date. Any amounts that become due and payable to ComEd prior to ComEd's transfer of the Attachments will be billed under the terms of the Existing Sprint Pole Attachment Agreement.*

Crown Castle NG Central LLC

By: [Signature]  
Name: Keith Monahan  
Title: Director - Tower Acquisitions  
Email: Keith.monahan@CrownCastle.com

Nextel West Corp.

By: [Signature]  
Name: John E. Beaudoin  
Title: ACTING DIRECTOR, NETWORK REAL ESTATE  
Email: JOHN.BEAUDOIN@SPRINT.COM

SBA Communications Corporation,  
on behalf of itself and its affiliates

By: [Signature]  
Name: Thomas P Hunt  
Title: V.P. & GENERAL COUNSEL  
Email: THUNT@SBASITE.COM

The Foundation for a Wireless World.  
CrownCastle.com

CEC000028

Acknowledged and accepted as of this

14 day of July, 2016:

Commonwealth Edison Company

By: 

Name:

JOE GILCHRIST

Title:

MANAGER, REAL ESTATE, FAC

Email:

JOE.GILCHRIST@CEMID.COM

EXHIBIT A

Number of Attachments to be Transferred to Crown Castle

Node Attachments

As of the date of this letter, ComEd is charging Sprint for a total of 279 node attachments. 215 attachments out of the 279 node attachments should be transferred to Crown Castle on the Transfer Date. The balance of the node attachments (64 node attachments) should continue to be billed to Sprint (and shall not be transferred pursuant to this letter).

Fiber Attachments on Poles Solely Owned by ComEd

As of the date of this letter, ComEd is charging Sprint for a total of 751 fiber attachments located on poles solely owned by ComEd. 713 fiber attachments out of 751 fiber attachments should be transferred to Crown Castle on the Transfer Date. The balance of the fiber attachments (38 fiber attachments) should continue to be billed to Sprint (and shall not be transferred pursuant to this letter).

Fiber Attachments on Poles Jointly Owned by ComEd

As of the date of this letter, ComEd is charging Sprint for a total of <sup>725</sup>722 fiber attachments located on poles jointly owned by ComEd and AT&T. 687 fiber attachments out of <sup>725</sup>722 fiber attachments should be transferred to Crown Castle on the Transfer Date. The balance of the fiber attachments (<sup>38</sup>36 fiber attachments) should continue to be billed to Sprint (and shall not be transferred pursuant to this letter). <sup>38</sup>

# PUBLIC VERSION

## Schedule I

### Disposed Assets

All of the assets of SBA DAS, LLC which are or were intended to be granted, conveyed, sold, assigned, transferred and delivered to Crown Castle NG Central LLC pursuant to that certain Asset Purchase Agreement (the “Purchase Agreement”) by and between SBA DAS, LLC and Crown Castle NG Central LLC dated June 29, 2016 (the “Disposed Assets”), which shall include, but not be limited to, the following:

(a) all fiber optic cabling owned by SBA DAS, LLC or acquired by SBA DAS, LLC from a third party by lease, indefeasible right of use or otherwise (the “Fiber”), as more particularly described on Exhibit A attached hereto;

(b) all tangible assets of SBA DAS, LLC, whether such tangible asset is owned, leased, licensed or otherwise possessed by SBA DAS, LLC (the “Tangible Assets”), as more particularly described on Exhibit B attached hereto;

(c) all contracts, agreements, options, notes, bonds, mortgages, indentures, deeds of trust, leases, subleases, licenses, sublicenses, purchase or sale orders, or other commitments, obligations or instruments that are binding or enforceable upon the parties thereto, whether written or oral, express or implied, in each case as amended, modified, extended or renewed (collectively, “Contracts”):

(1) relating to any above ground or below ground infrastructure on, under or through which any Fiber is located, attached or installed, including conduit use Contracts and pole attachment Contracts (collectively, “Conduit Use Agreements”);

(2) whereby SBA DAS, LLC has the right to use Fiber owned by another Person<sup>1</sup>, whether by lease, license or indefeasible right to use (collectively, “IRU Agreements”);

(3) relating to the use of property (other than Conduit Use Agreements and IRU Agreements), including access Contracts; easement Contracts; right-of-way use Contracts; cable or utility Contracts; railroad, waterway, bridge, street, highway, or other crowing Contracts; joint build/trench or other joint venture participation type Contracts; or any other Contracts of any kind or description relating to any above ground or below ground infrastructure on, under or through which any asset or equipment of SBA DAS, LLC (including Fiber) is located, attached or installed, or any real estate over or through which any asset or equipment of SBA DAS, LLC (including Fiber) traverses or crosses (collectively, “Property Use Agreements”); and

---

<sup>1</sup> “Person” means a natural person, corporation, partnership, limited liability company, trust, joint venture, unincorporated association, Governmental Authority or other entity. “Governmental Authority” means the United States of America, the state, commonwealth, county, town or other municipality in which any of the Disposed Assets are located, and any Person exercising executive, legislative, judicial, regulatory or administrative functions of, over, or pertaining to any of the Disposed Assets, including the Federal Communications Commission and any state or local public service commission or similar state or local agency.

(4) relating to the Disposed Assets (other than Customer Contracts<sup>2</sup>, Conduit Use Agreements, IRU Agreements and Property Use Agreements), to which SBA DAS, LLC is a party (or made for the benefit of SBA DAS, LLC) (collectively, “Other Contracts”);

(d) all Governmental Authorizations<sup>3</sup> that are required for the ownership, use and operation of the Disposed Assets as conducted on June 29, 2016;

(e) all of the intangible rights and property of SBA DAS, LLC relating to the Fiber;

(f) all data and records related to the Fiber to the extent under the control of SBA DAS, LLC or any of its representatives, including service and warranty records, equipment logs, operating guides and manuals, and other similar documents and records; and

(g) all defenses, claims, deposits, prepayments, causes of action, credits, warranties, rights of recovery, and rights of setoff relating to any right, property or asset included in the Disposed Assets or against any party under the Conduit Use Agreements, IRU Agreements, Property Use Agreements and Other Contracts.

For the avoidance of doubt, the following Excluded Assets (as defined in the Purchase Agreement) are not Disposed Assets: (i) any rental obligations or penalties for breach owed by Sprint to SBA DAS, LLC under any Customer Contracts with SBA DAS, LLC, whether arising before or after the date of the Purchase Agreement; and (ii) any assets related to a Phase III fiber network known as the NU Hub.

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<sup>2</sup> “Customer Contracts” means all Contracts between SBA DAS, LLC and any Person for (a) the use of Fiber, whether lit or dark, including any indefeasible rights to use or similar arrangement relating to the use of Fiber facilities or related equipment and also including any associated Fiber maintenance services, or (b) Cross Connect Services. “Cross Connect Services” means SBA DAS, LLC’s grant to any Person of the right to use fiber or other cabling to connect such Person’s network or system equipment located within space leased, licensed or otherwise acquired from SBA DAS, LLC with network or system equipment located in space owned or controlled by a third party.

<sup>3</sup> “Governmental Authorization” means any approval, consent, filing requirement, notice, license, permit, registration, franchise, waiver or other authorization issued, granted, given or otherwise made available by, to or under the authority of any Governmental Authority.



**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

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# EXHIBIT 1

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**REDACTED**

**REDACTED**

# **ATTACHMENT E**

PUBLIC VERSION

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

_____	)	
	)	
<b>Crown Castle Fiber LLC</b>	)	
<b><i>Complainant,</i></b>	)	
	)	<b>Proceeding Number 19-169</b>
	)	<b>19-170</b>
<b>v.</b>	)	<b>Bureau ID Number EB-19-MD-004</b>
	)	<b>EB-19-MD-005</b>
	)	
<b>Commonwealth Edison Company,</b>	)	
<b><i>Defendant</i></b>	)	
_____	)	

**DECLARATION OF MARTÍN MONTES**


I, Martín Montes, declare as follows:

1. My name is Martín Montes. I am Vice President of Large Customer Services with Commonwealth Edison Company (“ComEd”) and have served in that position for 7 months. Prior to my current role, I was ComEd’s Director External Affairs and served in that position for 5 years.
2. I make this declaration in support of ComEd’s Answer to the Pole Attachment Complaints in the above-captioned proceedings.
3. In that role, my job responsibilities included interfacing with the Illinois Commerce Commission (ICC) on issues related to ComEd, including issues relating to Crown Castle’s attachments to ComEd’s distribution electric utility poles in the State of Illinois.
4. Until recently it was always my clear understanding and the understanding of others at ComEd that the ICC regulated all pole attachments in the State of Illinois.
5. Based on developments which commenced in 2017, it is also my understanding that representatives of Crown Castle also had the understanding that all pole attachments in Illinois were regulated by the ICC.
6. In 2017 a dispute occurred between Crown Castle and ComEd regarding fiber and wireless attachments to ComEd poles.

## PUBLIC VERSION

7. In October 2017, I received a telephone call from the ICC, requesting a time to meet with ComEd representatives to discuss ComEd's third-party attachment (TPA) application process and fees. Representatives of the ICC indicated they had just concluded a meeting with representatives from Crown Castle and its respective attorneys regarding ComEd's TPA application process and fees. Crown Castle raised concerns with the ICC regarding the timeliness of ComEd's application process, as well as the fees ComEd charged.
8. Thereafter, at the request of the ICC, on October 31, 2017, ComEd representatives met with the ICC to discuss the concerns raised by Crown Castle.
9. On January 22, 2018, ComEd representatives had a follow-up meeting the ICC. ComEd representatives provided an update on the progress made in addressing the issues raised by Crown Castle.
10. It is also my understanding that in January 2018 Crown Castle representatives had a separate follow-up meeting with the ICC to discuss their issues related including wireless attachment fees, Red Tag pole replacement issues and timing under the application process.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

By:   
Martín Montes  
Vice President, Large Customer Services  
Commonwealth Edison Company

Dated: July 19, 2019

# **ATTACHMENT F**





## PUBLIC VERSION

6. To aid in the prioritization of corrective maintenance work, these red tagged rejected poles are further classified as either a "Priority Reject" pole or a "Non-Priority Reject" pole.
7. ComEd's designations for "Priority Reject" and "Non-Priority Reject" depend on the height of the pole. For a pole 60 feet or less in height above ground (i.e., 65-foot poles or shorter), a pole is red tagged and rejected if it has a remaining strength of 67% or less. Poles of this height are deemed "Priority Reject" if they have 0% - 33% remaining strength. Poles of this height are deemed "Non-Priority Reject" if they have 34% - 67% remaining strength.
8. For a pole greater than 60 feet in height above ground (i.e., 70-foot poles or taller), a pole is red tagged and rejected if it has a remaining strength of 75% or less. Poles of this height are deemed "Priority Reject" if they have 0% - 33% remaining strength. Poles of this height are deemed "Non-Priority Reject" if they have 34% - 75% remaining strength.
9. ComEd uses a 10-year cycle for inspecting its poles, which means that ComEd inspects each of its poles once every ten years.
10. Poles that are designated as non-priority red tags will not go at least 10 years without action. Instead, immediately upon inspection, ComEd treats "non-priority" poles with a pole treatment product from Osmose in order to control the decay, maintain the asset, and "extend the useful life" of the pole.<sup>1</sup>
11. Following this treatment, "non-priority" poles are scheduled for remediation whenever any entity (including ComEd) wants to upgrade facilities, add additional facilities to the pole, or subsequent inspection adjusts priority. This process makes sense because if the structure is currently in serviceable condition, then treating it with a product will control further decay and maximize its useful life without adding further stress. The strength calculation performed by Osmose is only an estimate which cannot determine what the exact strength is but can provide reliable indication of its ability to handle the existing stress. Adding new facilities to a pole in this condition is not a reliability and resiliency risk that ComEd can allow for its customers, regardless of whether ComEd or some other entity wants to add facilities.
12. Following treatment, should any entity (including ComEd) wish to add facilities to the pole, then that entity (including ComEd) must pay either to replace the pole or to restore the pole. This makes sense because it is the cost causer who pays to accommodate its attachments on a pole that cannot otherwise accommodate them.

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<sup>1</sup> There is an exception for treatment in that poles located on school properties, parks, playgrounds, and in wetlands do NOT receive a groundline treatment.



## PUBLIC VERSION

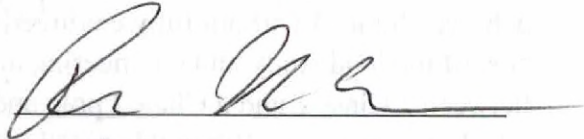
13. These practices and procedures ComEd follows with respect to its pole inspection program, including the identification and treatment of “red tagged” poles, complies with the NESC, which requires any condition that could endanger life or property to be promptly repaired, disconnected, or isolated, and which requires all other conditions to be recorded and to maintain such records until the defects are corrected.
14. ComEd’s design criteria specifies that all new and replaced structures be designed to NESC Grade B standards, and this design criteria applies whether the new facilities are being attached by ComEd or any other entity. Noting that it is less expensive to install a Class 1 pole than utilizing another class of pole and fully engineering the pole with a complete load study, a practice was temporarily followed in an attempt to generally achieve Grade B without fully engineering it. The rationale for this practice was that the cost of the load study and engineering and design work exceeds the difference in cost between a Class 1 and a Class 2 pole and performing a load study slowing down the new attachment process. When this practice was reviewed by distribution standards it was determined to be inconsistent with company design standard requirements and resultant from a human performance element the company is following up on internally.
15. The determination whether to replace or reinforce a pole is a design decision driven by the location of the decay, the size of the decay, the location of risers, the direction of the load, the extent of electric facilities, the height of the banding, whether the pole top is decayed, whether there are woodpecker holes, and dozens of other factors.
16. From June 2017 to March 2019, and before, for attachment of its own facilities, ComEd remedied “red tag” poles through reinforcement in some cases rather than pole replacement in every case.
17. ComEd’s policy was not to allow third parties like Crown Castle to reinforce poles during this same period based on a discretionary judgment. In any event, only a small subset of red-tagged poles might qualify under the same guidelines to be reinforced.
18. A large part of the reason Crown Castle must replace the overwhelming majority of “red tag” poles rather than reinforce them is because two-thirds of the distribution poles in Chicago are three-phase poles, which carry significant electric loads and which affect large numbers of utility customers, and most of Crown Castle’s attachments are in Chicago and similarly population dense areas. Because of the importance of these poles, and the need to maximize reliability and resiliency for the extensive customers they serve, ComEd’s nondiscriminatory policy is that red-tagged three-phase poles must be replaced, not just for Crown Castle but for ComEd and any other entity seeking to install new facilities.
19. Until May 2019, ComEd had allowed Crown Castle to install temporary attachments on some red-tagged poles on a case-by-case basis, but ComEd still required Crown Castle to

## PUBLIC VERSION

replace the pole. This practice was inconsistent with the company design standard requirement and resultant from a human performance element the company is following up on internally. In May 2019, ComEd's Distribution Standards department was asked to review this practice and from that time forward disallowed that practice because no one on ComEd's system, including ComEd, is allowed to install new temporary attachments on red-tagged poles. ComEd does not allow this practice for its own facilities and it does not allow it for other entities either.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

By:



Patrick M. Arns  
Manager, Distribution Standards  
Commonwealth Edison Company

Dated: July 19, 2019

# **ATTACHMENT G**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

**Proceeding Number 19-169**  
**Bureau ID Number EB-19-MD-004**

## CEC000092

not contain Rules 214.A.5.a and 214.A.5.b. The version of the NESC adopted in Illinois is the 2002 version of the Code. Instead, the relevant rule for this analysis are Rules 214.A.4 and .5, which in the 2002 NESC adopted by Illinois reads:

**214. Inspection and Tests of Lines and Equipment**

....

**4. Record of Defects**

Any defects affecting compliance with this code revealed by inspection or tests, if not promptly corrected, shall be recorded; such records shall be maintained until the defect is corrected.

**5. Remedying Defects**

Lines and equipment with recorded defects that could reasonably be expected to endanger life or property shall be promptly repaired, disconnected, or isolated.

5. Since Mr. Bingel's entire Declaration relies on the assumption that Rules 214.A.5.a and 214.A.5.b of the 2017 NESC has been adopted in Illinois, and since Mr. Bingel's Declaration makes no mention at all of the relevant Rules 214.A.4 and 5 in Illinois, much less provides any analysis of it, the opinions expressed in his Declaration are misdirected and uninformed.
6. At ComEd any poles or other structures which are found to pose an immediate safety hazard are mitigated with immediate resource commitment toward isolation, repair or replacement to remove the hazard. Conditions related to wider infrastructure operation and maintenance are responsibly prioritized, managed and executed.
7. A detailed, accurate description of ComEd's program can be quite complicated with lots of variants and different inspection methods, and depends on information such as wood species, original treatment type, setting medium, accessibility, presence of other underground facilities, pole height, electric capacity, effective circumference, pole defects (e.g., splits, woodpecker holes, cracks), service attachments, the impact on electric distribution customers, and other factors. It should also be noted that ComEd's pole inspections are currently outsourced to Osmose Utility Services, Inc., using Osmose load calculation software and using Osmose pole treatment services. This is the company with which Crown's expert Mr. Bingel was employed for 30 years. ComEd's specification for pole maintenance services is shared with its pole co-owners, sister companies, and its service provider. Beyond that, these are treated as internal proprietary documents.
8. Mr. Bingel's Declaration does not state that "standard industry practice is to replace 'priority' red tagged poles within approximately 90 days after inspection." Instead, Mr.



Bingel states: “Standard industry practice is to restore or replace ‘priority’ poles within time frames such as 30, 90 or 180 days.” The varying length of time reflects the fact that utilities may have varying standards for when a red tagged pole becomes ‘priority.’”

This statement indicates that there is no industry-wide standard at all, even under inapplicable NESC Rule 214.A.5, and that instead each utility may adopt their own standard.

9. For both “priority” and “non-priority” poles, there is no “industry standard” that details a timeframe for the replacement of reject structures beyond the “promptly” called for in Rule 214.A.5 for those defects “expected to endanger life or property.”
10. As a person with extensive experience in the Standards community, Mr. Bingel should be well aware of the thresholds necessary to create an industry standard as opposed to a “typical” or a “common” practice. Unlike industry standards, what might be considered to be “typical” or “common” practices can be influenced by perception. Mr. Bingel’s perception is likely influenced by working primarily with companies who have hired his former company Osmose for an inspection service. Those companies may offer an incomplete picture of the industry as a whole.
11. For “non-priority” poles, ComEd does in fact treat them immediately upon inspection with a pole treatment product from Osmose in order to control the decay, maintain the asset, and “extend the useful life” of the pole.<sup>1</sup> As explained on the Osmose website: “Applying effective remedial treatments to extend the safe, reliable service-life of the pole. Remedial treatment is the key to getting the most out of your investment. The use of remedial treatments will earn dividends via extended pole life and improved plant resiliency.”
12. Once “non-priority” poles are discovered and immediately treated,<sup>2</sup> ComEd does not allow anyone (including ComEd itself) to install additional facilities to that pole without first replacing it or reinforcing it.
13. Mr. Bingel’s Declaration does not state that any of the practices explained in Paragraph 36 of Crown Castle’s Pole Attachment Complaint are “standard industry practices,” and so the suggestion that they are somehow standards is unsupported.
14. The second sentence of Paragraph 36 of Crown Castle’s Pole Attachment Complaint does not state the “exact requirement” of the NESC, as adopted in Illinois. Footnote 2 of Table 261-1 of the 2002 NESC that has been adopted in Illinois does not include the term “actual loading” or anything like it. What the referenced footnote from the applicable (2002) NESC does is call for repair or replacement when the strength is reduced to “2/3

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<sup>1</sup> There is an exception for treatment in that poles located on school properties, parks, playgrounds, and in wetlands do NOT receive a groundline treatment.

<sup>2</sup> *Id.*

of that required when installed.” The term “that required” could be interpreted to suggest actual loading, however actual loading would also involve accounting for any facilities that may have been added or removed in the intervening years. But, “when installed” precludes accounting for these changes. At a minimum, the term “actual loading” would be too broad an interpretation.

15. Perhaps Mr. Bingel is instead again mistakenly referencing the 2017 NESC which has not been adopted in Illinois and which includes a different footnote to allow the incorporation of modified loads. Whatever the case, and whether or not Mr. Bingel’s interpretation of the 2017 NESC is correct, the term “actual loading” is not an appropriate term to refer to the 2002 NESC in effect in Illinois. As such, Mr. Bingel’s argument that relies a half dozen times on the phrase “actual loading” is misdirected and misinformed with respect to the NESC in Illinois.
16. Not only is this reliance on “actual loading” inappropriate in the state of Illinois, it forms the basis of a self-serving and contradictory suggestion by Crown Castle. Using Mr. Bingel’s mistaken Declaration for support, Crown and Mr. Bingel suggest that loading studies can and do confirm a “red tag” pole is available for new attachments: “when the actual loading for a pole is determined, the pole may actually be available for attachment because under the NESC the remaining strength must exceed two-thirds of the strength required to support the loading actually on the pole.” Later in the paragraph, however, they both state that it is not a common industry practice for this kind of analysis to be performed: “the practice of analyzing the actual load on a red tag pole to see if it still meets code requirements is not widely applied in the industry today.”
17. Crown Castle is therefore trying to use a nonexistent provision of the NESC in Illinois to convince the Commission that ComEd should perform a pole loading study that Crown Castle believes few in the industry performs in order to allow Crown Castle to attach its facilities to poles that have been red tagged.
18. Crown Castle also assumes a level of precision surrounding the inspection company’s strength estimation and their load calculation that is not warranted. Each of these assessments is no more than an imprecise determination, the manipulation of which results in an even less precise determination. It is therefore appropriate for ComEd to determine that a pole which has failed inspection because it was shown to be deteriorated should not support additional facilities, even if an imprecise loading study later suggests it might possibly withstand additional load.
19. To establish its engineering and design practices, many of which exceed NESC minimum code compliances, ComEd must factor in considerations related to reliability, resiliency, and planning, the safety of all those working on its poles, and the safe and efficient operation of its pole plant as a whole. It is unworkable and unsafe as a practical matter, and thus a very poor engineering and design practice, to design down to minimum code

compliance without assessing these numerous other factors that affect the safety, efficiency and reliability of the system.

20. While Mr. Bingel's opinion as a civil engineer is appreciated, Mr. Bingel has never been responsible for running a major metropolitan utility. Questions of reasonableness or appropriateness are best left to those who are responsible not only for poles but for the remainder of the utility's urban infrastructure including cables, manholes, vaults, wires, and conduits, all of which demand resources to support an evolving grid of the future.

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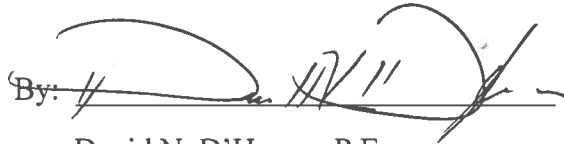
21. Mr. Bingel claims that "Standard industry practice is to restore or replace Non-Priority poles during the next year's inspection program, although it is not unusual for utility companies to restore Non- Priority poles during the same year as the inspection." But there is no standard industry practice that Mr. Bingel cites to. If there is such an "Industry Standard" then Crown Castle should produce any such published standard, which presumably would be an ANSI-accredited, consensus-based document. Lacking one, what the industry has instead are a variety of Company standards, which will vary according to the particular companies' particular conditions.
22. Mr. Bingel relies on the 2017 version of NESC Sections 214.A.5.a and 214.A.5.b for his conclusions about when priority poles should be fixed. Even if the 2017 NESC applied to Illinois, it agrees with the 2002 version in that neither specifies any timeline beyond "promptly" for those structures expected to endanger life or property.
23. Crown Castle is apparently unaware that the version of the NESC adopted in Illinois does not contain Rules 214.A.5.a or 214.A.5.b. The version of the NESC adopted in Illinois is the 2002 version of the Code.
24. Since Crown Castle's argument relies on the assumption that Rule 214.A.5.a and 214.A.5.b of the 2017 NESC has been adopted in Illinois, and since Crown Castle makes no mention at all of the relevant Rules 214.A.4 and 5 in Illinois, much less provides any analysis of it, Crown Castle's allegations in Paragraphs 117-120 of Crown Castle's Pole Attachment Complaint are misdirected and uninformed.
25. ComEd admits that the 2017 version of the NESC Handbook contains the language quoted in Paragraph 118 of Crown Castle's Pole Attachment Complaint, but denies that the 2017 version of the NESC Handbook is appropriate to use in this context.
26. Even assuming the NESC Handbook were appropriate to reference in this context, the relevant assertions made by Crown Castle are not included in the 2002 version of the NESC Handbook.



## PUBLIC VERSION

27. Even if the NESC in effect in Illinois would make the sections covering 214.A.5.a and 214.A.5.b of the NESC Handbook applicable, and even if the unusual loading studies Crown proposes were more precise, it would be inappropriate to require utilities to design and operate their systems in accordance with the minimum standards of the NESC. As explained in the first section of the NESC, the NESC contains “basic provisions” necessary for safety, and “is not intended as a design specification or as an instruction manual.”
28. There is no such thing as a “temporary attachment” when it comes to load on a pole. The key consideration for purposes of compliance with the NESC and utility standards is what is being attached, not how long it is being attached.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

By: 

David N. D'Hooze, P.E.  
Standards Engineer  
Commonwealth Edison Company

Dated: July 19, 2019

# **ATTACHMENT H**

PUBLIC VERSION

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

_____	)	
	)	
<b>Crown Castle Fiber LLC</b>	)	
<i>Complainant,</i>	)	
	)	<b>Proceeding Number 19-169</b>
<b>v.</b>	)	<b>Bureau ID Number EB-19-MD-004</b>
	)	
<b>Commonwealth Edison Company,</b>	)	
<i>Defendant</i>	)	
_____	)	

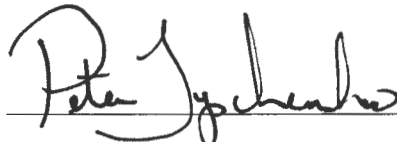
**DECLARATION OF PETER TYSCHENKO**

I, Peter Tyschenko, declare as follows:

1. My name is Peter Tyschenko. I am currently the Director of Distribution Engineering at Commonwealth Edison Company ("ComEd").
2. I make this declaration in support of ComEd's Answer to the Pole Attachment Complaint in the above-captioned proceeding.
3. I have held by current role for six months and have worked at ComEd for 28 years.
4. With limited exceptions, Priority Restorable poles are restored in the current inspection year and Priority Non-Restorable (Replacement) poles are scheduled for replacement the "next calendar year after inspection."
5. ComEd does perform load calculations on Non-Priority red tagged poles as a prioritization mechanism. ComEd's contractor Osmose performs the load calculation using Osmose's "LoadCalc" software, and performs the calculation on all non-priority poles the week following inspection when the pole is being inspected on the ten-year cycle. The load calculation performed by Osmose is just an estimate which cannot determine what the exact load is but can provide enough of a determination to further classify the poles. Once the load calculation is done, ComEd further categorizes the poles for prioritization.

6. Immediately upon inspection, ComEd treats “non-priority” poles with a pole treatment product from Osmose in order to control the decay, maintain the asset, and “extend the useful life” of the pole.<sup>1</sup> As explained on the Osmose website: “Applying effective remedial treatments to extend the safe, reliable service-life of the pole. Remedial treatment is the key to getting the most out of your investment. The use of remedial treatments will earn dividends via extended pole life and improved plant resiliency.”
7. Once “non-priority” poles are discovered and immediately treated,<sup>2</sup> ComEd does not allow anyone (including ComEd itself) to install additional facilities to that pole without first replacing it or reinforcing it.
8. ComEd has a database containing information about its poles that have been inspected, and Osmose provides the input information for the database. It is possible to query the database to identify which of those poles are red tagged. Crown Castle may have asked for access to this database to easily engineer its fiber routes. ComEd believes it responded by stating the information is confidential, and that Crown Castle must in any event survey the poles before they submit an application. ComEd’s system is critical infrastructure and ComEd cannot and does not provide such sensitive information about its pole plant to outside parties like Crown Castle.
9. ComEd’s red tagged poles are being corrected in a reasonable, appropriate, and timely manner.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

By:   
Peter Tyschenko  
Director of Distribution Engineering  
Commonwealth Edison Company

Dated: July 19, 2019

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<sup>1</sup> There is an exception for treatment in that poles located on school properties, parks, playgrounds, and in wetlands do NOT receive a groundline treatment.

<sup>2</sup> *Id.*

# **ATTACHMENT I**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

## DECLARATION OF SARAH S. HERRERA

1. My name is Sarah S. Herrera. I am currently the Senior Business Analyst at Commonwealth Edison Company (“ComEd”).
2. I make this declaration in support of ComEd’s Answer to the Pole Attachment Complaint in the above-captioned proceeding.
3. I have held by current role for 11 months and have worked at ComEd for 6 years.
4. ComEd believes the Exhibit 3 list provided by Crown Castle at Attachment D of its Pole Attachment Complaint shows 976 red tagged poles, 894 designated for replacement, and 82 designated for reinforcement, leaving one not designated for replacement or reinforcement.
5. ComEd believes the invoices for the replacements listed in Attachment D, Exhibit 3 of Crown Castle’s Pole Attachment Complaint total [REDACTED] and the invoices for the reinforcements total [REDACTED].
6. ComEd believes that Crown Castle, through April 30, 2019 has paid [REDACTED] for the replacements and [REDACTED] for the reinforcements listed in Attachment D, Exhibit 3 of Crown Castle’s Pole Attachment Complaint.

## PUBLIC VERSION

7. ComEd's policies are neither unreasonable nor unlawful and must factor in considerations related to reliability, resiliency, and planning, the safety of all those working on its poles, and the safe and efficient operation of its pole plant as a whole.
8. ComEd has not denied Crown Castle access to red tagged poles, but instead allows Crown Castle to gain access by paying to replace or, if appropriate, reinforce the pole. In addition, Crown Castle has other options to deploy its facilities, including by installing its facilities underground, and by using the streetlights and other facilities owned by the City of Chicago and other municipalities located in ComEd's service territory.
9. Out of the 6,701 poles listed in Attachment D, Exhibit 12 of Crown Castle's Complaint, 26 poles were cancelled by Crown Castle; 652 poles require payment from Crown Castle; 47 poles are on hold pending updated information from Crown Castle; less than 193 days has elapsed between the date of submission and April 30, 2019 for 372 poles. More than 193 days elapsed between the date of submission and April 30, 2019 for only 5,604 red tag poles associated with attachment applications.
10. ComEd believes the Exhibit 3 list provided by Crown Castle at Attachment D of its Pole Attachment Complaint shows 214 red tagged poles to which Crown Castle has proposed to attach wireless nodes.
11. The invoices for the cost to replace the 214 red tagged poles for wireless attachments listed in Exhibit 3, Attachment D of Crown Castle's Pole Attachment Complaint total [REDACTED]
12. Crown Castle has paid invoices through April 30, 2019, for 206 of the 214 poles listed in Exhibit 3, Attachment D of Crown Castle's Pole Attachment Complaint totaling [REDACTED]
13. Out of the 254 poles listed in Attachment D, Exhibit 12 of Crown Castle's Complaint, 43 poles were submitted less than 223 days prior to April 30, 2019 and of those 43 poles, 24 have been permitted by ComEd. Moreover, six of the poles have been cancelled by Crown Castle; 10 poles are on hold pending updated information from Crown Castle; and 39 poles require payment from Crown Castle. More than 223 days elapsed between the date of submission and April 30, 2019 for only 156 poles.
14. ComEd denies the allegation that replacement costs have increased. The invoices issued by ComEd on May 30, 2019 were for poles that were particularly expensive due to additional scope. Invoice 18-2953-CN included two poles with transformer equipment and one T corner pole. Invoice 18-2955-CN included two transformer equipment poles. Invoice 18-3037-CN included two transformer poles. Invoice 18-0900-CN required installation of an alley arm, installation of a new pole top pin, the relocation of neutral/secondary, and relocation of services. Invoice 18-2777-CN included two poles

with transformer equipment and one T corner pole.

15. As of April 30, 2019, Crown Castle has paid ComEd a total of [REDACTED] (for both wireline and wireless attachments) to replace red tag poles. ComEd denies that red tagged poles have “preexisting conditions.” Instead, red tagged poles lack the capacity to accommodate the additional attachments, so capacity must be expanded by replacing or, if appropriate, reinforcing the red tag pole.
16. The forecasts provided by Crown Castle were inaccurate and unreliable, and therefore could not be used by ComEd from planning perspective. As shown in the chart attached hereto at Exhibit 1, for the first five months of the year Crown Castle’s actual number of applications was below their planned number of applications by 40%. By September they got back on track, and by the end of the year they were 30% over their estimate. It is very difficult to plan for either back office and line resources with such large variability from Crown Castle’s projections. Moreover, providing ComEd with the number of projected applications proves to be little value as an application can be for one pole or many poles and the associated make-ready can be minimal or extensive. Thus, while Crown Castle is correct that they provided ComEd with a schedule of applications (which was way off), Crown did not provide ComEd with meaningful and accurate information.
17. ComEd does not know what the 29 meetings are Crown Castle referred to in Paragraph 78 of its Pole Attachment Complaint. ComEd denies the allegations that all of these meetings were an attempt to remedy delays. ComEd conducts weekly meetings to discuss operational issues and prioritize attachments, similar to ComEd’s meetings with other attachers. At these weekly meetings, Crown Castle took the opportunity to reprioritize more recent applications over older applications, consistent with ComEd’s continuing efforts to collaborate with Crown Castle. The reprioritization requested by Crown Castle had the effect of delaying ComEd’s completion of other pending aged applications.
18. Since May 2018, Crown Castle has submitted 748 fiber applications (covering 8,075 poles) that are still pending without a permit being issued by ComEd as of April 30, 2019.
19. Out of the 41 pending fiber applications listed in Attachment D, Exhibit 12 of Crown Castle’s Complaint, eight applications were submitted to ComEd less than 60 days ago; eight applications were cancelled by Crown Castle; eight applications require payment from Crown Castle; one is on hold pending updated information from Crown Castle; one application was submitted to ComEd on May 7, 2019, which is outside the May 1, 2017 – April 30, 2019 timeframe; and two applications are not even in ComEd’s records as valid attachment applications. More than 60 days elapsed between the date of submission and April 30, 2019 for only 13 attachment applications.



## PUBLIC VERSION

20. None of the surveys listed in Attachment D, Exhibit 12 of Crown Castle's Complaint are overdue by 262 days or anywhere close to that length of time. Moreover, only two of the attachment applications listed in Attachment D, Exhibit 12 of Crown Castle's Complaint are listed as being over 262 days from submission to ComEd. Out of these two attachment applications, ComEd has not received a survey payment from Crown Castle for one of the applications, and for the other application, ComEd performed the survey well under 262 days.
21. Out of the 446 attachment applications listed in Attachment D, Exhibit 12 of Crown Castle's Complaint, six applications have been cancelled by Crown Castle; three are on hold pending updated information from Crown Castle; 37 applications did not require make-ready and therefore no make-ready estimate was necessary; one application was submitted to ComEd on May 7, 2019, which is outside the May 1, 2017 – April 30, 2019 timeframe; and 12 applications were submitted to ComEd 74 days or less from April 30, 2019. More than 74 days elapsed between the date of submission and April 30, 2019 for only 387 attachment applications.
22. Some of the delay for make-ready estimates are caused by the reprioritizations requested by Crown Castle, and others are caused by Crown Castle's request to have these applications reviewed for potential reinforcement pursuant to the pilot program. Although ComEd has not submitted some of these estimates within 78 days from the completion of the survey, there is only one that ComEd has not submitted for almost a year since the survey. For that one, the submission date for ComEd Fiber Application Number 18-0899-CN is listed in Attachment D, Exhibit 12 of Crown Castle's Complaint as May 10, 2018 (355 days elapsed from submission to April 30, 2019). This statement is incorrect. ComEd Fiber Application Number 18-0899-CN was submitted on May 10, 2018, which is 345 days prior to April 30, 2019. The poles associated with Application Number 18-0899-CN are part of the second Osmose pilot program, which seeks to determine whether the poles can be reinforced as an alternative to being replaced. The pilot program is the reason 345 days elapsed from the date of submission.
23. Out of the 446 attachment applications listed in Attachment D, Exhibit 12 of Crown Castle's Complaint, three applications have been cancelled by Crown Castle; two applications are on hold pending updated information from Crown Castle; 59 applications require payment from Crown Castle; and less than 193 days elapsed between the date of submission and April 30, 2019 for 33 applications. More than 193 days elapsed between the date of submission and April 30, 2019 for only 482 applications.
24. Since March of 2018 Crown Castle has submitted 783 wireless applications that were still pending as of April 30, 2019. Some of these delays are caused by the reprioritizations requested by Crown Castle, and others are caused by Crown Castle's request to have these applications reviewed for potential reinforcement pursuant to the pilot program.

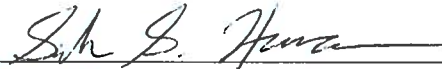
## PUBLIC VERSION

25. Out of the 114 wireless applications listed in Attachment D, Exhibit 12 of Crown Castle's Complaint, 13 applications were cancelled by Crown Castle; 21 applications are on hold pending updated information from Crown Castle; five applications are for modifications of existing Third Party Attachments and do not require an additional walk; four applications have no Third Party Attachment number and can't be identified; one application is listed twice (18-3827-CN); and two applications were submitted to ComEd after April 30, 2019. Pre-construction surveys have not been completed for only 37 attachment applications within 60 days of submission.
26. Out of the 378 attachment applications listed in Attachment D, Exhibit 12 of Crown Castle's Complaint, 14 applications did not require make-ready and therefore no make-ready estimate was necessary; 11 applications were cancelled by Crown Castle; 14 applications are on hold pending updated information from Crown Castle; one was a modification of another attachment application for which the make-ready estimate was already provided to Crown Castle; and 74 days or less elapsed between the date of submission and April 30, 2019 for 16 of the applications. More than 74 days elapsed between the date of submission and April 30, 2019 for only 322 applications.
27. Out of the nine wireless attachment applications listed in Attachment D, Exhibit 12 of Crown Castle's Complaint, four were rejected by ComEd, and less than 365 days has elapsed between the date of submission and April 30, 2019 for four applications. More than 365 days elapsed between the date of submission and April 30, 2019 for only one wireless attachment application that requires a make-ready estimate.
28. Out of the 254 wireless attachment applications listed in Attachment D, Exhibit 12 of Crown Castle's Complaint, six applications have been cancelled by Crown Castle; 10 are on hold pending updated information from Crown Castle; 39 applications require payment from Crown Castle; two are completed modifications and did not need a permit; and less than 223 days elapsed between the date of submission and April 30, 2019 for 41 of the applications. Of those 41 applications, permits were issued by ComEd for 24 applications in less than 223 days. More than 223 days elapsed between the date of submission and April 30, 2019 for only 156 wireless attachment applications.
29. Out of the 124 wireless attachment applications listed in Attachment D, Exhibit 12 of Crown Castle's Complaint, more than 273 days (nine months) elapsed between the date of submission and April 30, 2019 for only 71 wireless attachment applications.
30. Out of the 17 wireless attachment applications listed in Attachment D, Exhibit 12 of Crown Castle's Complaint, permits were issued by ComEd for five applications in less than 365 days; one requires payment from Crown Castle; four are on hold pending updated information from Crown Castle; and one has been cancelled by Crown Castle. More than 365 days elapsed between the date of submission and April 30, 2019 for only six wireless attachment applications.

## PUBLIC VERSION

31. From May 27-30, 2019, ComEd replaced three poles for Crown Castle. But ComEd's records also show that from May 28-June 1, 2019, ComEd replaced 21 poles for Crown Castle. No one worked on May 27 because it was Memorial Day. And ComEd made up for it by hiring crews to work overtime on Saturday, June 1.
32. Allowing Crown Castle to direct and control third party contractors would be an inappropriate draconian solution considering that the parties only recently learned that the FCC is asserting jurisdiction. Prior to that time, the assumption was FCC make-ready deadlines do not apply. At the very least, the FCC should give the parties time to allow ComEd and Crown Castle to work collaboratively to accommodate Crown Castle's facilities, and revisit the situation in twelve months.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

By: 

Sarah S. Hererra  
Senior Business Analyst  
Commonwealth Edison Company

Dated: July 19, 2019

# **EXHIBIT 1**

**REDACTED**

# **ATTACHMENT J**

PUBLIC VERSION

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

\_\_\_\_\_  
**Crown Castle Fiber LLC**  
*Complainant,*

v.

\_\_\_\_\_  
**Commonwealth Edison Company,**  
*Defendant*

\_\_\_\_\_  
**Proceeding Number 19-169**  
**Bureau ID Number EB-19-MD-004**

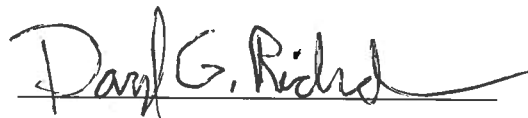
**DECLARATION OF DARYL G. RICHARDSON**

I, Daryl G. Richardson, declare as follows:

1. My name is Daryl G. Richardson. I am currently the Operations Coordinator at Commonwealth Edison Company ("ComEd"). I make this declaration in support of ComEd's Answer to the Pole Attachment Complaint in the above-captioned proceeding.
2. I have held by current role for two years and have worked at ComEd for 18 years.
3. ComEd rescinded permits previously issued to Crown Castle Fiber LLC for attachments to 35 poles because an intern at ComEd mistakenly authorized ComEd's Real-Estate Department to release the permits for these applications, even though attachment was inappropriate because the applications contained 35 poles that required make-ready.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

By: \_\_\_\_\_



Daryl G. Richardson  
Operations Coordinator  
Commonwealth Edison Company

Dated: July 17, 2019

# **ATTACHMENT K**



PUBLIC VERSION

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

_____	)	
	)	
<b>Crown Castle Fiber LLC</b>	)	
<i>Complainant,</i>	)	
	)	<b>Proceeding Number 19-169</b>
<b>v.</b>	)	<b>Bureau ID Number EB-19-MD-004</b>
	)	
<b>Commonwealth Edison Company,</b>	)	
<i>Defendant</i>	)	
_____	)	

**DECLARATION OF MICHAEL S. MANN**

I, Michael S. Mann, declare as follows:

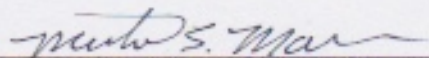
1. My name is Michael S. Mann. I am currently the Manager, New Business CIPA at Commonwealth Edison Company (“ComEd”).
2. I make this declaration in support of ComEd’s Answer to the Pole Attachment Complaint in the above-captioned proceeding.
3. I have held my current role for three months and have worked at ComEd for 35 years.
4. ComEd has not denied Crown Castle access to red tagged poles, but instead allows Crown Castle to gain access by paying to replace or, if appropriate, reinforce the pole. In addition, Crown Castle has other options to deploy its facilities, including by installing its facilities underground, and by using the streetlights and other facilities owned by the City of Chicago and other municipalities located in ComEd’s service territory.
5. ComEd does not know which 19,651 poles Crown Castle is referring to in Paragraph 62 of its Pole Attachment Complaint.
6. To replace poles with transformer equipment, you have to run a ground up the pole, install another equipment arm for the cutout, install the transformer, make up all the connections on the transformer (primary and secondary side), test the transformer before restoring power back to customer. As a result, poles with transformers and equipment are a lot more work than a straight line pole.

7. To replace T corner poles, you may have one to three phases on one and one to three phases coming in underneath off at a 90 degree angle. The utility has to extend the primary that is in the perpendicular position most of the time. Then all the primary wires have to be transferred energized because the utility cannot take an outage, due to the amount of customers on the line and that it feeds. This also means extra safety precautions have to be taken into account. Extra measures have to be taken to support strain from multiple directions before and during pole replacements.
8. ComEd believes it has timely processed Crown Castle's application for pole attachments given ComEd's considerable constraints.
9. ComEd is one of the largest electric utility companies in the nation, responsible for delivering safe and reliable power to 3.8 million homes and businesses across northern Illinois. The company manages a network of 90,000 miles of power lines, more than 1.3 million poles and 1,300 substations that make up the electrical infrastructure of the nation's third largest metropolitan region. As part of its core business, ComEd is a member of three mutual assistance groups coordinated through the Edison Electrical Institute, (EEI).
10. Third Party Attachments are a workstream that touches multiple departments and is not utility core work. Third Party Attachments are typically telecom companies that want to utilize utilities' existing infrastructure as a conduit to get to market with various communication technologies. With 5G technology there is competition that is creating large and volatile volume changes. Each application can request between 1 and 99 pole attachment locations with associated make ready work.
11. In 2012, ComEd received approximately 48 Third Party Attachment applications across the service territory compared to more 4500 in 2018. The make ready work is now approximately 2000 pole replacements and approximately 27,000 pole attachments per year. In 2017 and 2018, the telecom companies were very guarded with their workplan projections, and with the volume spikes, ComEd manually polled many attachers to get directional forecasts on volumes. Originally, Crown Castle stated a 12-18 month build out and then in the fourth quarter of 2018 they stated that this was a multi-year (5+ years) sustainable effort.
12. With the increase in Third Party Attachment volumes, ComEd created a flexible and scalable structure dedicated for the design portion of Third Party Attachments keeping the design function ahead of construction.
13. In 2018, as part of ComEd's Edison Electric Institute commitment, ComEd sent crews for hurricane rebuilding efforts in Puerto Rico and Florida. In late 2018, ComEd applied additional resources to recover on make ready work however, ComEd experienced our own storm in late November. In early November of 2018 California started to rebuild their

infrastructure due to a large fire and over the next few months started to pull nationally for qualified electrical workers.

14. In 2019, California drew additional workers nationally by offering approximately 32 hours of overtime per week plus a generous per diem. Simultaneously, ComEd was challenged with supporting internal storms and mutual assistance mixed with extreme cold weather through early February of 2019, as part of our core work, and caused a slow down on make ready work. With a tight labor market, ComEd secured additional contracting crews and even allocated internal and external overtime while being impacted by what was in addition an abnormally wet spring. For the first quarter of 2019, ComEd has experienced six internal storm recovery activations and approximately 80 days of inclement weather.
15. ComEd has to balance multiple Third Party Attachers requesting approval to attach to our infrastructure, some involving required attachments by law enforcement that may take a higher priority due to their impact from public safety standpoint. ComEd works with all Third Party Attachers to prioritize their work. For example, between December 2018 and June 2019 Crown Castle reprioritized approximately 146 applications which included moving newer applications in front of aged ones.
16. In 2018, ComEd utilized [REDACTED] full time equivalent employees for back office third party attachment support. In early 2019, it progressed to [REDACTED] full time equivalent employees, and is now at [REDACTED] full time equivalent employees for July. With increased resources and favorable weather for make ready work, May-June completions were 300% higher for crown castle than the first four months of 2019. Additionally, ComEd proactively reached out to multiple contractors to solicit additional resources and offered overtime for its internal workforce as well as the contractors.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

By: 

Michael S. Mann  
Manager, New Business CIPA  
Commonwealth Edison Company

Dated: July 19, 2019

# **ATTACHMENT L**

5/30/19

Ms. Whitfield:

I received a letter from you yesterday requesting ComEd's approval by today of Thayer Power & Communication ("Thayer") as a new utility-approved contractor to perform certain make-ready construction work, specifically "self-help complex and above the communications space make-ready" per 47 CFR 1.1412(a) and "simple" make-ready work per 47 CFR 1.1412(b). While ComEd is not prepared to respond to you today, we will review this request and get back to you in a timely manner. In the meantime, we would appreciate you providing any additional information you have indicating that Thayer is an approved vendor of ComEd as you indicate. Our records reflect no such arrangement. In addition, please provide proof that Thayer has met these five minimum qualifications you cite.

Furthermore, like my previous correspondence to Crown Castle, I reiterate my concern with Crown citing Federal Communications Commission ("FCC") regulations, even though the regulation of pole attachments has rested exclusively with the Illinois Commerce Commission ("ICC") for many years. In 1978, the ICC certified to the FCC that it regulates pole attachments, thus preempting the entire field of pole attachments in accordance with the federal Pole Attachment Act. The fact that the ICC's "reverse preemption" grants it exclusive jurisdiction over pole attachments is evidenced by the 1996 Telecommunications Act and subsequent FCC rulings, none of which required states to re-certify following the expansion of FCC jurisdiction in "FCC States," and by the fact that not a single state did re-certify following the 1996 Act.

Nevertheless, we expect Crown's concerns over the timeliness of ComEd's performance of make-ready work to be rendered moot in the near future. ComEd has been working collaboratively with you and others from Crown to establish enhanced processes and increased staffing in order to meet the significant demands of Crown and other telecommunications companies deploying 5G.

Best regards,



Mark A. Falcone

# **ATTACHMENT M**



PUBLIC VERSION

# 2017 National Electrical Safety Code<sup>®</sup> (NESC<sup>®</sup>)

## C2-2017



**100**<sup>TH</sup> ANNIVERSARY EDITION



TK152  
.A44  
2017

3 Park Avenue, New York, NY 10016-5997, USA

CEC000119

## Section 21. General requirements

### 210. Referenced sections

The Introduction (Section 1), Definitions (Section 2), References (Section 3), and Grounding methods (Section 9) shall apply to the requirements of Part 2.

### 211. Number 211 not used in this edition.

### 212. Induced voltages

Rules covering supply-line influence and communication-line susceptiveness have not been detailed in this Code. Cooperative procedures are recommended in the control of voltages induced from proximate facilities. Therefore, reasonable advance notice should be given to owners or operators of other proximate facilities that may be adversely affected by new construction or changes in existing facilities.

*NOTE:* Additional information about supply-line influence and communication-line susceptiveness may be obtained from IEEE Std 776<sup>TM</sup>-1992 [B39] and IEEE Std 1137<sup>TM</sup>-1991 [B51].

### 213. Accessibility

All parts that must be examined or adjusted during operation shall be arranged so as to be accessible to authorized persons by the provision of adequate climbing spaces, working spaces, working facilities, and clearances between conductors.

### 214. Inspection and tests of lines and equipment

#### A. When in service

##### 1. Initial compliance with rules

Lines and equipment shall comply with these safety rules when placed in service.

##### 2. Inspection

Lines and equipment shall be inspected at such intervals as experience has shown to be necessary.

*NOTE:* It is recognized that inspections may be performed in a separate operation or while performing other duties, as desired.

##### 3. Tests

When considered necessary, lines and equipment shall be subjected to practical tests to determine required maintenance.

##### 4. Inspection records

Any conditions or defects affecting compliance with this Code revealed by inspection or tests, if not promptly corrected, shall be recorded; such records shall be maintained until the conditions or defects are corrected.

##### 5. Corrections

- a. Lines and equipment with recorded conditions or defects that would reasonably be expected to endanger human life or property shall be promptly corrected, disconnected, or isolated.



- b. Other conditions or defects shall be designated for correction.
- B. When out of service
  - 1. Lines infrequently used  
Lines and equipment infrequently used shall be inspected or tested as necessary before being placed into service.
  - 2. Lines temporarily out of service  
Lines and equipment temporarily out of service shall be maintained in a safe condition.
  - 3. Lines permanently abandoned  
Lines and equipment permanently abandoned shall be removed or maintained in a safe condition.

## 215. Grounding of circuits, supporting structures, and equipment

- A. Methods  
Grounding required by these rules shall be in accordance with the applicable methods given in Section 9.
- B. Circuits
  - 1. Common neutral  
A conductor used as a common neutral for primary and secondary circuits shall be effectively grounded.
  - 2. Other neutrals  
Primary line, secondary line, and service neutral conductors shall be effectively grounded.  
*EXCEPTION 1:* Circuits designed for ground-fault detection and impedance-current-limiting devices.  
*EXCEPTION 2:* Primary circuits designed with a single point grounded neutral. This type of neutral conductor is not an effectively grounded neutral conductor.
  - 3. Other conductors  
Line or service conductors, other than neutral conductors, that are intentionally grounded, shall be effectively grounded.
  - 4. Surge arresters  
Where the operation of surge arresters is dependent upon grounding, they shall be effectively grounded.
  - 5. Use of earth as part of circuit
    - a. Supply circuits shall not be designed to use the earth normally as the sole conductor for any part of the circuit.
    - b. Monopolar operation of a bipolar HVDC system is permissible for emergencies and limited periods for maintenance.
- C. Non-current-carrying parts
  - 1. General  
Metal or metal-reinforced supporting structures, including lamp posts; metal conduits and raceways; cable sheaths; messengers; metal frames, cases, and hangers of equipment; and metal switch handles and operating rods shall be effectively grounded. For the purpose of this rule metallic stand-off brackets or straps, metal crossarm braces, metal through-bolts, etc., are not considered to be metal frames, cases, or hangers of equipment and therefore not required to be effectively grounded.  
  
For the purpose of this rule, a wood structure with metal-reinforcing trusses installed at its base for strength purposes is not considered to be a metal-reinforced structure and therefore not required to be effectively grounded.

# **ATTACHMENT N**

## Section 21. General Requirements

### 210. Referenced Sections

The Introduction (Section 1), Definitions (Section 2), References (Section 3), and Grounding Methods (Section 9) shall apply to the requirements of Part 2.

### 211. Number 211 not used in this edition.

### 212. Induced Voltages

Rules covering supply-line influence and communication-line susceptiveness have not been detailed in this code. Cooperative procedures are recommended in the control of voltages induced from proximate facilities. Therefore, reasonable advance notice should be given to owners or operators of other proximate facilities that may be adversely affected by new construction or changes in existing facilities.

### 213. Accessibility

All parts that must be examined or adjusted during operation shall be arranged so as to be accessible to authorized persons by the provision of adequate climbing spaces, working spaces, working facilities, and clearances between conductors.

### 214. Inspection and Tests of Lines and Equipment

#### A. When In Service

##### 1. Initial Compliance With Rules

Lines and equipment shall comply with these safety rules when placed in service.

##### 2. Inspection

Lines and equipment shall be inspected at such intervals as experience has shown to be necessary.

*NOTE:* It is recognized that inspections may be performed in a separate operation or while performing other duties, as desired.

##### 3. Tests

When considered necessary, lines and equipment shall be subjected to practical tests to determine required maintenance.

##### 4. Record of Defects

Any defects affecting compliance with this code revealed by inspection or tests, if not promptly corrected, shall be recorded; such records shall be maintained until the defects are corrected.

##### 5. Remedying Defects

Lines and equipment with recorded defects that could reasonably be expected to endanger life or property shall be promptly repaired, disconnected, or isolated.

#### B. When Out of Service

##### 1. Lines Infrequently Used

Lines and equipment infrequently used shall be inspected or tested as necessary before being placed into service.

##### 2. Lines Temporarily Out of Service

Lines and equipment temporarily out of service shall be maintained in a safe condition.

##### 3. Lines Permanently Abandoned

Lines and equipment permanently abandoned shall be removed or maintained in a safe condition.

# ATTACHMENT O

Table 261-1A

**Strength Factors for Structures,<sup>1</sup> Crossarms, Support Hardware, Guys, Foundations, and Anchors for Use with Overload Factors of Table 253-1**

[It is recognized that structures will experience some level of deterioration after installation, depending upon materials, maintenance, and service conditions. The table values specify strengths required at installation. Footnotes specify deterioration allowed, if any. When new or changed facilities add loads to existing structures (a) the strength of the structure when new shall have been great enough to support the additional loads and (b) the strength of the deteriorated structure shall exceed the strength required at replacement. If either (a) or (b) cannot be met, the structure must be replaced, augmented, or rehabilitated.]

	Grade B	Grade C
<b>Strength factors for use with loads of Rule 250B</b>		
Metal and Prestressed-Concrete Structures <sup>6</sup>	1.0	1.0
Wood and Reinforced-Concrete Structures <sup>2,4</sup>	0.65	0.85
Support Hardware	1.0	1.0
Guy Wire <sup>5,6</sup>	0.9	0.9
Guy Anchor and Foundation <sup>6</sup>	1.0	1.0
<b>Strength factors for use with loads of Rule 250C</b>		
Metal and Prestressed-Concrete Structures <sup>6</sup>	1.0	1.0
Wood and Reinforced-Concrete Structures <sup>3,4</sup>	0.75	0.75
Support Hardware	1.0	1.0
Guy Wire <sup>5,6</sup>	0.9	0.9
Guy Anchor and Foundation <sup>6</sup>	1.0	1.0

<sup>1</sup> Includes poles.

<sup>2</sup> Wood and reinforced concrete structures shall be replaced or rehabilitated when deterioration reduces the structure strength to 2/3 of that required when installed. If a structure is replaced, it shall meet the strength required by Table 261-1A. Rehabilitated portions of structures shall have strength greater than 2/3 of that required when installed.

<sup>3</sup> Wood and reinforced concrete structures shall be replaced or rehabilitated when deterioration reduces the structure strength to 3/4 of that required when installed. If a structure is replaced, it shall meet the strength required by Table 261-1A. Rehabilitated portions of structures shall have strength greater than 3/4 of that required when installed.

<sup>4</sup> Where a wood or reinforced concrete structure is built for temporary service, the structure strength may be reduced to values as low as those permitted by footnotes (2) and (3) provided the structure strength does not decrease below the minimum required during the planned life of the structure.

<sup>5</sup> For guy insulator requirements, see Rule 279.

<sup>6</sup> Deterioration during service shall not reduce strength capability below the required strength.

Table 261-1B

**Strength Factors for Structures<sup>1,2</sup> and Crossarms for Use with Overload Factors of Table 253-2**

[It is recognized that structures will experience some levels of deterioration after installation, depending upon materials, maintenance, and service conditions. The table values specify strengths required at installation. Footnotes specify deterioration allowed for wood and reinforced concrete structures. When new or changed facilities add loads to existing structures (a) the strength of the structure when new shall have been great enough to support the additional loads, and (b) the strength of the deteriorated structure shall exceed the strength required at replacement. If either (a) or (b) cannot be met, the structure must be replaced, augmented, or rehabilitated.]

	Grade B	Grade C
<b>Strength factors for use with loads of Rule 250B and Rule 250C</b>		
Wood and Reinforced-Concrete Structures	1.0	1.0

<sup>1</sup> Includes poles.

<sup>2</sup> Where a wood or reinforced-concrete structure is built for temporary service, the structure strength may be reduced to values as low as those permitted by the *at replacement* overload factors in Table 253-2, footnotes (2) and (3) provided the structure strength does not decrease below the minimum required during the planned life of the structure.